

Discrimination

Bullying Boss Can Harm Employer on the Job—and in the Courtroom

BNA Snapshot

- Employers need to rein in even high performers who mistreat subordinates
- Some states and cities have workplace discrimination laws
- Bullied workers can sue for emotional distress



By Gayle Cinquegrani

Some bosses are jerks.

When they're nasty to all their employees, they're "equal opportunity jerks," said Natasha Bowman, president of Performance ReNew in New York. A boss's boorish behavior could lead to liability for the employer and decreased workplace productivity, she told a conference audience March 13.

"Salary alone does not make employees happy," Bowman said. The "tone of the workplace" is highly significant. She said human resources professionals should "talk to your senior leadership" about "civility in the workplace."

Sometimes the problems flow from a "high-value employee"—a high performer, a rainmaker, a world-renowned expert—who thinks he "can treat the staff any way he wants," Bowman said.

Some companies rationalize star employees' bad behavior toward their subordinates with comments like "he's not paid to be a nice guy" and "he's great at what he does, so he's worth it," Stephen Bergstein, a partner at Bergstein & Ullrich in New Paltz, N.Y., told Bloomberg BNA March 16.

HR Has Duty to Act

Bowman said frequently a company's HR department doesn't "feel empowered" to handle this type of situation, so it allows the behavior to continue. However, HR professionals have an obligation "to advocate for our employees," she said. "We can't let this high-value employee continue to create this toxic environment."

HR should investigate every complaint so it can identify troublesome managers, Bowman said. Next, HR should "look at the totality of the evidence" to "make a business case" for reining in the problematic high-value employee.

Show company leadership the "monetary impact," Bowman advised. The threat of a mass turnover of employees can be a big motivator for company leaders to get rid of an oppressive manager, she said.

Where there is mistreatment, there will be resentment, and employees can become "actively disengaged," Bowman said. There could be more use of sick leave, more workplace injuries and less productivity. Claims could increase under the Family and Medical Leave Act, the Americans with Disabilities Act and workers' compensation statutes.

Workers also could sue the employer for discrimination. Discrimination laws don't apply in cases in which everybody is mistreated, though, because discrimination refers to treatment that is different for people in protected categories. "If you're doing it to everybody, you're not discriminating against anybody," Bergstein said.

Emotional Distress Claims

Even when a boss's bad conduct doesn't amount to discrimination, however, it can lead to liability. Bullied workers sometimes sue for intentional infliction of emotional distress instead of or in addition to discrimination. Intentional-infliction-of-emotional-distress claims are "very hard to prove," Bowman said. "You have to prove that the conduct was extreme or outrageous" and that a connection exists between the conduct and the severe emotional harm.

"More and more states are addressing an equal opportunity jerk."

—Natasha Bowman

An employer could try to fight a distress claim by arguing that the employee's personal issues, such as an impending divorce, caused his symptoms. Damages are much higher for intentional infliction of emotional distress than for discrimination claims, though, so they're often worth pursuing.

Some states are more hospitable to emotional distress claims than others. "New York takes a dim view of infliction-of-emotional-distress claims,

especially if it looks like you're trying to pump life into a failing discrimination claim," Bergstein said.

There also could be state or local statutes that govern workplace bullying. "More and more states are addressing an equal opportunity jerk," Bowman said.

State and Local Laws

"There are certain state laws that prohibit bullying in the workplace," and some state legislatures are considering passing legislation on this subject, Jose Behar, a partner at Hughes Socol Piers Resnick & Dym in Chicago, told Bloomberg BNA March 16. "Just because you don't have a federal lawsuit doesn't mean you don't have a state or a municipal lawsuit."

A discrimination claim may be viable even when managers bully all their employees, if "their bullying tends to be more frequent or extreme to a particular employee or group of individuals," Behar said. "In those situations, depending on the pervasiveness, that could rise to be a violation of federal law."

To monitor the tenor of the workplace in hopes of solving or preventing problems, employers can use internal engagement surveys and read online surveys, such as those by Glassdoor, Bowman said.

Employers also can question employees who quit their jobs, but departing workers are "not always truthful" in exit interviews, Bowman told Bloomberg BNA. They may hesitate to make negative statements because they hope to return some day if the organization gets rid of the problematic manager, she said.

Employers should treat exit interviews as "one piece" in the "heat map," Bowman said. "Organizations make a huge mistake relying on one set of data" instead of looking "at the totality" of information they have.

"It's all about the culture," Bowman said. "Being able to lay in bed on a Sunday night and be excited" going back to your job the next morning is priceless.

Bowman spoke at a conference hosted by the Society for Human Resource Management.

To contact the reporter on this story: Gayle Cinquegrani in Washington at gcinquegrani@bna.com

To contact the editor responsible for this story: Tony Harris in Washington at tharris@bna.com